IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3145 of 2005

Between:

V. Ravinder Reddy, S/o. V. Kishan Reddy,
R/O. 17-1-383/IP/157, Indra Prastha Township, Phase I, Saidabad, Hyderabad.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by Secretary, Roads & Buildings Department, Secretariat, Hyderabad.
2 Commissioner of Tenders, Government of Andhra Pradesh, Hyderabad.
3 chief Engineer, Roads & Buildings, Errum Manzil, Hyderabad.
4 Superintending Engineer, Roads & Buildings, Karimnagar..

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ and direct the respondents to consider the tender of the petitioner by opening price bid of the petitioner along with that of the other tenderers in respect of Tender Notification Nos E-in-C(R&B) NABARD/174, 177 & 181/2004-2005 dated 18-01-2005 relating to different road laying works in Karimnagar district and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner:MR.V.VENKATARAMANA

Counsel for the Respondents: GP FOR ROADS & BUILDINGS

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 3145 of 2005

O R D E R:

For not opening the price bid of the petitioner along with other tenderers in respect of tender notification Nos.E-in-C(R&B) NABARD/174, 177 & 181/2004-2005 dated 18.1.12005 relating to different road laying works in Karimnagar District, the present writ petition is filed.

In pursuance of the tender notification dated 18.1.2005 relating to different road laying works in Karimnagar District, the petitioner submitted a tender. According to him, he uploaded the requisite details and documents on 9.2.2005 before the schedule time. He uploaded the Solvency Certificate issued by M/s Syndicate Bank, Lingampally Branch, Kachiguda, Hyderabad on 9.2.2005 itself and complied with all the terms and conditions. The technical bids were opened on 9.2.2005 at 4.00 p.m. and processing of his tender has not taken place. When he verified in the Internet, he realized that the uploaded solvency certificate of the petitioner has not reached the computer system of the 4th respondent. After making oral request to consider him for opening of the price bid, he has submitted a representation dated 17.2.2005 requesting the 4th respondent to clear him for opening of the price bid. Hence the present writ petition.

The respondents filed their counter affidavit stating that as per the instructions to tenderers, hard copies of certificates other than uploaded will not be considered for evaluation. 4 tenderers have submitted the tenders on line in respect of work in N.I.T.No.177 and N.I.T. No. 181 each and 6 tenderers have submitted tenders online for work invited in N.I.T. No. 174. The petitioner submitted a letter through fax stating that due to technical problem the solvency

certificate has not been uploaded and requested the respondents to consider his solvency certificate. The statement of the petitioner that the format relating to submission of solvency certificate has been changed is denied and it is stated that it is not a new proforma. The petitioner being a Class-I Contractor should have known about this proforma of solvency certificate. All the documents uploaded by the petitioner are alleged to have been received on website except the solvency certificate. Therefore, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner contended that though the petitioner uploaded the solvency certificate along with the other documents, it has not reached the computer system of the 4th respondent and therefore the petitioner gave a representation on 17.2.2005 requesting the 4th respondent for opening up of his price bid and on the date of closure of the tenders the petitioner himself submitted a hard copy of the solvency certificate and therefore the case of the petitioner may be directed to be considered for opening of the price bid.

On the other hand, learned Government Pleader for Roads & Buildings contended that the essential certificate, which cannot be dispensed with, has not been uploaded by the petitioner and the petitioner himself sent a fax message stating that he has not uploaded the solvency certificate and the technical bid evaluation of the tenders would be done on the certificates/documents uploaded through online only towards qualification criteria and therefore his price bid has not been opened rightly. Hence, there are no grounds to grant any relief to the petitioner.

The scope of judicial review in contractual matters is very much circumscribed. The award of contract or licence, whether it is by a private party or a public body, is essentially a commercial transaction. It is well settled now that the courts can scrutinize the contracts by the Government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favouritism. The point as

to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth in *Tata Cellular v. Union of India*. After examining the entire case law, the following principles have been reduced:

> "(1) The modern trend points to judicial restraint in administrative action.
>
> (2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.
>
> (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
>
> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
>
> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
>
> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure".

Bearing the above principles in mind, it has to be seen

whether the impugned order suffers from any incurable legal infirmities so as to call for interference by this court.

The Engineer-in-Chief, R&B Administration & NABARD has issued tender notification on the “e-procurement” platform vide Notice Inviting Tenders (‘NIT’ for short) dated 18.1.2005 relating to three different works of laying road in Karimnagar District. One of the tender conditions is that the tenderer should demonstrate liquid assets and/or credit facilities/letter of credits/solvency certificates from Nationalised/Schedule Bank of values as indicated in the NIT. As per paragraph (b) of Clause (5) of G.O.Ms.No.6 dated 11.1.2005, the technical bid evaluation of the tenderers may be done on the certificates/documents uploaded through online only towards qualification criteria furnished by them. Therefore, the above conditions in the tender documents clearly indicate that the solvency certificate has to be uploaded through online along with the documents and certificates. The case of the petitioner is that he uploaded the solvency certificates on 9.2.2005 and he complied with the terms and conditions of the tender notification. When he verified from the Internet, he realized that the uploaded solvency certificate has not reached the computer system of the 4th respondent. According to the respondents, they received all the documents which were uploaded by the petitioner except the solvency certificate. The petitioner in his letter dated 17.2.2005 stated that he submitted the tender through “e-procurement” along with all relevant documents and due to technical problems unfortunately the solvency certificate has not been uploaded. Therefore, hard copy of the solvency certificate along with the necessary certificates has been submitted to the S.E. for consideration. So, from the material available on record it

is clear that the solvency certificate has not been uploaded by the petitioner in respect of the tender. Therefore, the respondents rightly have not considered the tender of the petitioner in opening the price bid.

It is not a case of indiscrimination in the sense that the tenders of other persons have been opened when they have not submitted the solvency certificate. It is also not a case of arbitrariness since submission of solvency certificate is a requisite condition which cannot be dispensed with. So also, it is not a case of favouritism because there is no factual foundation with regard to discrimination, arbitrariness or favouritism.

Therefore, the writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Roads & Buildings Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
2 Commissioner of Tenders, Government of Andhra Pradesh, Hyderabad.
3 Chief Engineer, Roads & Buildings, Errum Manzil, Hyderabad.
4 Superintending Engineer, Roads & Buildings, Karimnagar.

5. Two C.Cs. to the G.P. for Roads & Buildings, High Court of A.P., Hyderabad (OUT).

6. 2 CD copies.